

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECURITY PEOPLE, INC,
Plaintiff,
v.
ANDREI IANCU, et al.,
Defendants.

Case No. [18-cv-06180-HSG](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 7

On October 9, 2018, Plaintiff Security People, Inc. (“SPI”) brought this suit against the U.S. Patent and Trademark Office (“USPTO”) and Andrei Iancu, in his official capacity as Director of the USPTO (collectively, “Defendants”). Dkt. No. 1 (“Compl.”). SPI alleges a single count, seeking to have the *inter partes* review (“IPR”) process under 35 U.S.C. §§ 311–319, as established by the American Invents Act (“AIA”), declared unconstitutional on the grounds that its retroactive application to Plaintiff’s patent violates various constitutional guarantees. *Id.* ¶¶ 26–27.

Pending before the Court is Defendants’ motion to dismiss the complaint with prejudice under Federal Rule of Civil Procedure (“Rule”) 12(b)(1), principles of *res judicata*, and Rule 12(b)(6). After carefully considering the parties’ arguments, the Court **GRANTS** Defendants’ motion.

I. BACKGROUND

Plaintiff is the assignee of U.S. Patent Number 6,655,180 (“the ’180 Patent”), which was issued on December 2, 2003, prior to Congress’s passage of the AIA. *Id.* ¶¶ 3–4. In November 2014—after the AIA’s passage—Plaintiff sued Ojmar US, LLC (“Ojmar”) in this Court for alleged infringement of the ’180 Patent. *Id.* ¶ 7; see *Sec. People, Inc. v. Ojmar US, LLC*, No.

4:14-cv-04968-HSG (N.D. Cal. Nov. 10, 2014), ECF 1. Ojmar thereafter filed a petition with the USPTO to institute IPR of certain claims in the '180 Patent. *See* Compl. ¶¶ 7, 21. IPR was instituted, and consistent with authority provided under the AIA, the Patent and Trial Appeals Board ("PTAB") issued a final written decision, which cancelled claim 4 of the '180 Patent as obvious, after which Plaintiff dismissed its patent infringement action against Ojmar. *Id.* ¶¶ 7, 23. Plaintiff unsuccessfully appealed PTAB's decision to the Federal Circuit. *Id.* ¶ 7; *see also* *Sec. People, Inc. v. Ojmar US, LLC*, 702 Fed. Appx. 982 (Fed. Cir. 2017).

Plaintiff separately filed another action in this Court against the USPTO, its Director, and Ojmar, alleging a single count positing that the IPR process was unconstitutional for violating Article III separation of powers principles and the right to have patent validity issues determined by a jury. *See Sec. People, Inc. v. Lee*, No. 4:15-cv-3172-HSG (N.D. Cal. July 8, 2015), ECF 1. The Court ultimately dismissed the action with prejudice for failure to state a cognizable claim to relief in light of a then-recent Federal Circuit decision rejecting the argument that IPR violates Article III. *See Sec. People, Inc. v. Lee*, No. 4:15-cv-3172-HSG, 2016 WL 9455260, at *1 (N.D. Cal. Mar. 25, 2016) (citing *MCM Portfolio LLC v. Hewlett-Packard Co.*, 812 F.3d 1284 (Fed. Cir. 2015)). SPI appealed that decision to the Ninth Circuit, which transferred the appeal to the Federal Circuit, which summarily affirmed dismissal. *See Sec. People, Inc. v. Lee*, No. 2016-2378, 2017 WL 1963332 (Fed. Cir. Feb. 23, 2017).

II. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction" and may only hear cases when authorized by the Constitution or statute. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 376–78 (1994). The plaintiff bears the burden of establishing subject matter jurisdiction. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). "Without jurisdiction the court cannot proceed at all in any cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)).

III. DISCUSSION

The Court finds it lacks subject matter jurisdiction to hear Plaintiff's claim. Although courts presume judicial review of administrative decisions, this presumption may be overcome

1 where “congressional intent to preclude judicial review is fairly discernible in the statutory
2 scheme.” *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 351 (1984) (internal quotation marks
3 omitted). Further, a plaintiff’s claims must be of the “type Congress intended to be reviewed
4 within th[e] statutory structure.” *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207, 212 (1994).
5 All told, provided there is “meaningful review” of given claims, Congress may require parties “to
6 proceed exclusively through the statutory review scheme,” even where parties “raise constitutional
7 challenges to federal statutes.” *Elgin v. Dep’t of Treasury*, 567 U.S. 1, 10 (2012).

8 Here, Congress expressed its intent to preclude District Court jurisdiction in the AIA’s
9 statutory language. Section 141 specifies that parties may appeal IPR decisions “only” to the
10 Federal Circuit. And SPI here appeals PTAB’s cancellation of its patent claim, which is well
11 within the scope of claims Congress directed to the Federal Circuit. See 35 U.S.C. § 319. Against
12 this argument, SPI contends that PTAB cannot provide meaningful review of its constitutional
13 claims, relying primarily on *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561
14 U.S. 477 (2010). Opp. at 10–12. But unlike in *Free Enterprise Fund*, where the statute limited
15 judicial review in meaningful ways, Section 141 here provides for broad Federal Circuit review of
16 PTAB’s final written decisions. Compare *Free Enterprise Fund*, 561 U.S. at 489–91, with 35
17 U.S.C. § 141(c) (providing review for any “dissatisfied” party). And the Supreme Court has
18 stressed that the “Federal Circuit is fully capable of providing meaningful review” of
19 constitutional challenges. See *Elgin*, 567 U.S. at 10.

20 Because the AIA’s statutory language indicates that Congress intended to provide review
21 of Plaintiff’s constitutional challenge to PTAB’s decision “only” in the Federal Circuit, which is
22 “fully capable of providing meaningful review,” the Court finds it lacks federal subject matter
23 jurisdiction over SPI’s claims. See *id.*; 35 U.S.C. § 319. The Court further finds that leave to
24 amend is unwarranted because the “pleading could not possibly be cured by the allegation of other
25 facts.” See *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Plaintiff’s only claim challenges
26 the constitutionality of PTAB’s decision, and no new facts would establish subject matter
27 jurisdiction in this Court.

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IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' motion to dismiss, and Plaintiff's complaint is **DISMISSED WITHOUT LEAVE TO AMEND**. The Clerk is directed to close the file.

IT IS SO ORDERED.

Dated: 6/10/2019


HAYWOOD S. GILLIAM, JR.
United States District Judge